

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION	) ) MDL NO. 1456 ) Civil Action No. 01-12257-PBS ) Subcategory Case No. 03-10643
THIS DOCUMENT RELATES TO:	)
<i>The City of New York, et al.</i>	) Judge Patti B. Saris
v.	)
<i>Abbott Laboratories, et al.</i>	) Magistrate Judge Bowler
	)

**PLAINTIFFS' CONSENTED-TO MOTION FOR LEAVE TO FILE REPLY IN  
FURTHER SUPPORT OF MOTION TO COMPEL DISCOVERY FROM DEFENDANT  
MERCK & CO., INC.**

Pursuant to Local Rule 7.1(B)(3), plaintiffs, the City of New York and New York Counties in MDL 1456, hereby respectfully move for leave to file a reply in further support of plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc. (hereinafter referred to as "Merck") by October 16, 2009. In support of this motion, plaintiffs state the following:

1. On September 4, 2009, plaintiffs filed their Motion to Compel Discovery from Defendant Merck. *See* Docket. No. 6487; Sub-docket. No. 158.
2. Pursuant to L.R. 37, defendant Merck's response was due within 14 days thereafter, September 28, 2009.
3. On September 17, 2009, defendant Merck filed an Unopposed Motion for Enlargement of Time to respond by October 5, 2009. *See* Docket. No. 6509; Sub-docket. No. 165.
4. On October 5, 2009, defendant Merck filed its Opposition to Plaintiffs' Motion to Compel Discovery from Defendant Merck. *See* Docket. No. 6572; Sub-docket. No. 178.
5. Defendant Merck has consented to Plaintiffs' Motion for Leave to File a Reply in Further

Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck by October 16, 2009.

For the foregoing reasons, plaintiffs respectfully request that this motion be granted. A proposed order is attached hereto.

Dated: October 7, 2009

Respectfully submitted,

**City of New York and New York Counties in  
MDL 1456 except Nassau and Orange, by**

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By: /s/ Joanne M. Cicala  
Joanne M. Cicala  
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*Counsel for the County of Orange*

**Certification Pursuant to Local Rule 7.1**

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that she conferred with counsel for defendant and counsel for defendant has consented to the filing of this motion.

Dated: October 7, 2009

/s/ Joanne M. Cicala  
Joanne M. Cicala

### **CERTIFICATE OF SERVICE**

I, Kathryn Allen, hereby certify that on the 7th day of October, 2009, I caused a true and correct copy of the above Consented-To Motion for Leave to File Reply in Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., to be delivered to counsel of record for defendants by electronic service pursuant to Case Management Order No. 2 entered by the Honorable Patti B. Saris in MDL No. 1456.

Dated: October 7, 2009

/s/ Kathryn B. Allen  
Kathryn B. Allen  
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DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESAL PRICE  
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) MDL NO. 1456  
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*The City of New York, et al.*

v.

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)  
) Judge Patti B. Saris  
)  
) Magistrate Judge Bowler

**[PROPOSED] ORDER GRANTING PLAINTIFFS' CONSENTED-TO MOTION FOR  
LEAVE TO FILE REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL  
DISCOVERY FROM DEFENDANT MERCK & CO., INC.**

IT IS HEREBY ORDERED THAT the City of New York and New York Counties shall be granted leave to file their Reply in Further Support of Plaintiffs' Motion to Compel Discovery from Defendant Merck & Co., Inc., by October 16, 2009.

Dated: October \_\_, 2009

\_\_\_\_\_  
Hon. Marianne B. Bowler  
United States Magistrate Judge